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# GENERAL ORDER

## FAIRFAX COUNTY POLICE DEPARTMENT

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SUBJECT: DISCIPLINARY ACTION AND APPEALS	NUMBER:	310.2
CANCELS ORDER DATED: 7-1-10	DATE:	10-1-11

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### I. PURPOSE

The purpose of this order is to establish specified procedures pertaining to disciplinary actions and appeals within the Department. The scope of authority is defined for those levels of command authorized to impose formal disciplinary action and the procedures required to register an appeal are established.

### II. POLICY

It will be the policy of the Department to impose such disciplinary actions as deemed necessary in a fair and impartial manner and to provide adequate appeal procedures to ensure that the rights of all employees of the Department are protected.

### III. APPLICABILITY

- A. Unless expressly stated otherwise herein, the provisions of this general order shall apply to all employees, except Sections IX through XI which shall apply only to sworn employees of the Fairfax County Police Department. Appeals for civilian employees shall be handled in accordance with Chapter 17 of the Fairfax County Personnel Regulations. Nothing contained in this general order shall prohibit the informal counseling of an employee by a supervisor regarding minor infractions of departmental policy or procedure which do not result in disciplinary action being taken.
- B. The appeal procedures of this order are not available to any sworn employee who is serving a probationary period for an original appointment.
- C. For appeals of disciplinary action, sworn employees may elect to use this order, or General Order 310.3, Grievance Procedures for Sworn and Non-Sworn Employees/Chapter 17 of the Personnel Regulations of the County of Fairfax, unless expressly exempted by 310.3.
- D. A sworn employee's decision to use the provisions of this order or General Order 310.3, Grievance Procedures for Sworn and Non-Sworn Employees /Chapter 17 of the Personnel Regulations of the County of Fairfax is final

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and binding. Sworn employees shall not be permitted to use the procedures of both this order and General Order 310.3.

#### IV. DEFINITIONS

Work day: The term "work day" as used herein, shall mean calendar day, exclusive of Saturday, Sunday, and legal holidays as defined by Va. Code 2.2-3300.

#### V. DISCIPLINARY ACTIONS

- A. To ensure consistency of application, the appropriate authority shall review past disciplinary matters as one factor in determining the proper disciplinary recommendation and/or action to prevent future misconduct. The reviewing authority is not limited to a specific time period; however, sustained violations should be reviewed and considered based on their relevance.
- B. If the classification of any alleged violation is sustained, the following types of disciplinary action may be imposed.
  - 1. Oral Reprimand - To be administered and documented as specified by General Order 310.1, Oral Reprimand/Verbal Counseling.
  - 2. Written Reprimand - To be prepared and presented to the employee by the commanding officer.
  - 3. Suspension - Without pay. The Director of Human Resources, Fairfax County, shall be notified of each occurrence.
  - 4. Transfer for disciplinary reasons.
  - 5. Reduction in rank - To any lower level deemed appropriate. The Director of Human Resources, Fairfax County, shall be notified of each occurrence.
  - 6. Dismissal from the Department - The effective date of dismissal will be delayed for 20 work days to allow the accused employee the opportunity to exercise the right to appeal pursuant to General Order

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310.2, Disciplinary Actions and Appeals or 310.3, Grievance Procedures for Sworn and Non-Sworn Employees /Chapter 17 of the Personnel Regulations of the County of Fairfax, unless the offense that led to dismissal was determined by competent authority to have such a grievous impact on either the Department or the public as to require an earlier dismissal date. In such cases, the date of dismissal will be no sooner than ten work days, however, the employee may be placed on administrative leave until the date of dismissal. The director of the Department of Human Resources for Fairfax County shall be notified of each occurrence.

- C. Disciplinary actions, except those specifically excluded under the provisions of this order, may preclude an employee's eligibility for promotion. This period of ineligibility will be 12 months from the date of issuance of an advance notice memorandum or written reprimand.

The following disciplinary actions will not affect an employee's eligibility for promotion.

- All oral reprimands
- Written reprimands relating to cruiser accidents
- Written reprimands relating to equipment loss or damage
- Written reprimands related to photo red light summonses

## VI. DISCIPLINARY AUTHORITY

Deputy chiefs, bureau/division/station commanders, and assistant commanders when given approval, may impose or recommend disciplinary action in accordance with the following guidelines:

- A. Station/Division Commanders and Assistant Commanders
1. May impose oral or written reprimands.

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2. After consultation with the affected bureau commander and the commander of the Administrative Support Bureau may make supervisory EAP referrals. K:\IA Case Review Documents\Disciplinary Diversion Procedures.doc.

3. May impose additional training requirements.

4. After consultation with the affected bureau commander, may recommend suspensions, demotions, disciplinary transfers, unsatisfactory service separations, or terminations.

B. Bureau Commanders

1. May impose oral or written reprimands.

2. After consultation with the commander of the Administrative Support Bureau, may make supervisory EAP referrals.

3. May impose additional training requirements.

4. May recommend suspensions.

5. May recommend disciplinary transfers.

6. After consultation with the affected deputy chief, may recommend demotions, unsatisfactory service separations, or terminations.

C. Deputy Chiefs

1. May impose oral or written reprimands.

2. After consultation with the commander of the Administrative Support Bureau, may make supervisory EAP referrals.

3. May impose additional training requirements.

4. May recommend disciplinary action consisting of suspensions, demotions, disciplinary transfers, unsatisfactory service separations, or terminations.

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- D. The Chief of Police may impose all forms of disciplinary action as outlined in Section V.
- E. If, for any reason, the station, division or bureau commander believes it to be inadvisable for them to serve as the reviewing authority in a particular case, such authority shall be reassigned as directed by the Chief of Police or his designee.
- F. Administrative investigations resulting in discipline which is imposed at a level below the Chief of Police shall be reviewed by the bureau commander, deputy chief of police, and Chief of Police. A disciplinary action may be vacated by higher authority if additional investigation of the incident or reconsideration of the imposed discipline is warranted.

### VII. ADMINISTRATIVE PROCEDURES

- A. Oral Reprimand
  - 1. An oral reprimand shall be administered and documented as specified by General Order 310.1.
  - 2. The oral counseling/reprimand session shall be documented in the "Action Taken" portion of the investigative report.
  - 3. The oral counseling/reprimand form shall be retained at the station or division level in accordance with General Order 310.1, Oral Reprimand/Verbal Counseling. The form will not be included in the employee's personnel file.
  - 4. Oral reprimands will not affect an employee's eligibility for promotion.
- B. Written Reprimand
  - 1. If it is determined that an offense is of such a nature that a record should be placed in an employee's personnel file, a written reprimand will be prepared. The memorandum will contain:

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- a. A statement of charges in sufficient detail to enable the employee to understand fully the violation, infraction, conduct, or offense for which the employee is being disciplined;
  - b. A statement that it is an official written reprimand, and that it will be placed in the employee's permanent personnel file;
  - c. A statement of previous offenses in those cases where the letter is considered a continuation of constructive discipline;
  - d. A statement that similar occurrences could result in more severe disciplinary action;
  - e. Notice of the sworn employee's right to appeal under 310.2, Disciplinary Actions and Appeals or 310.3, Grievance Procedures for Sworn and Non-Sworn Employees/Chapter 17 of the Personnel Regulations of the County of Fairfax and of non-sworn employee's right to appeal under 310.3, Grievance Procedures for Sworn and Non-Sworn Employees /Chapter 17 of the Personnel Regulations of the County of Fairfax.
2. The employee shall acknowledge the receipt of the memorandum by signature and date. If the employee declines to sign the acknowledgment, the reviewing authority shall write "refused" in the signature block, initial, and date the document.
  3. The written reprimand, together with the administrative investigation file, shall be forwarded to the appropriate bureau commander for review.
  4. After three years, the employee may submit a written request through the Department chain of command to the director of the Department of Human Resources for Fairfax County, to have the written reprimand removed from their personnel file, provided it has not been part of a subsequent disciplinary action. The written reprimand will become a part of the permanent case file in the Internal Affairs Bureau and will be a permanent part of the employee's prior disciplinary record.

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5. Written reprimands relating to cruiser accidents, photo red light summonses, and equipment loss or damage will not affect an employee's eligibility for promotion.
- C. Suspensions, Disciplinary Transfers, Demotions, Unsatisfactory Service Separations, or Terminations
  1. If the recommended discipline consists of demotion, suspension, disciplinary transfer, unsatisfactory service separation, or termination, then the employee shall be provided with advance notice of the recommendation.
  2. The employee shall be provided with a 20 work day advance notice memorandum of the proposed disciplinary action.
  3. The advance notice memorandum must include:
    - a. A statement of charges in sufficient detail to enable the employee to understand fully the violation, infraction, conduct or offense for which the employee is being disciplined;
    - b. A statement that disciplinary actions may preclude an employee's eligibility for promotion. Furthermore, the notice should state that the period of ineligibility will be 12 months from the date of issuance of this notice;
    - c. The type of disciplinary action recommended for imposition;
    - d. A statement that the disciplinary action, if imposed, will become a permanent part of the employee's official personnel file;
    - e. A statement that the employee may respond to the charges within five work days;
    - f. A statement of previous offenses, if any, which have been considered in arriving at the proposed disciplinary action;

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- g. The effective date of disciplinary action (no sooner than 20 work days from the date of the advance notice memorandum/ten work days for unsatisfactory service separation); and
  - h. Notice of the sworn employee's right to appeal under 310.2 or 310.3, Grievance Procedures for Sworn and Non-Sworn Employees/Chapter 17 of the Personnel Regulations of the County of Fairfax and of non-sworn employee's right to appeal under 310.3, Grievance Procedures for Sworn and Non-Sworn Employees/Chapter 17 of the Personnel Regulations of the County of Fairfax.
- 4. The employee shall acknowledge by signature and date, the receipt of the advance notice memorandum and the discussion of the relevant issues in sufficient detail to provide the employee with an understanding of the charge. The employee shall receive a copy of the memorandum. If the employee declines to sign the acknowledgment, the reviewing authority shall write "refused" in the signature block, initial, and date the document.
- 5. The administrative investigation, conclusions, and disciplinary recommendation/action shall be reviewed by the employee's bureau commander, Deputy Chief, and the Chief of Police. Absent an appeal, the employee will be notified by memorandum of the findings of the Chief of Police and the disciplinary action(s) to be imposed.
- 6. The imposition of a disciplinary suspension shall be in accordance with General Order 301, Internal Investigations, Section X, paragraph C. Additionally, commanders shall consult with the Payroll Division concerning the dates of suspension to ensure, whenever possible, that the employee will not be responsible for the County's portion of the health insurance premium, and to avoid any other adverse impact, other than the monetary loss resulting from a term of suspension.



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### VIII. HEARING PROCEDURES

- A. If the reviewing authority determines that no violation of regulations is sustained, the employee will be notified of the results of the investigation. A notification memorandum shall be prepared and submitted with the administrative investigation file through the chain of command for review and signature by the Chief of Police.
- B. If the reviewing authority determines that the evidence presented supports the finding of a sustained violation, a disciplinary hearing shall be scheduled. The purpose of the disciplinary hearing is to provide the employee with an opportunity to hear the evidence obtained during the administrative investigation and to respond to that evidence. Reviewing commanders shall schedule the disciplinary hearing in advance with the employee and the investigating supervisor. This process will assist the reviewing authority with making a knowledgeable and fair decision in the matter. This initial disciplinary hearing is not an appeal, consequently, the employee has no right to be represented or accompanied by another person. Legal representatives shall not be permitted to attend this meeting.

There shall be no formal rules of evidence in the disciplinary hearing. The following guidelines should be used for the conduct of the meeting:

- 1. The reviewing authority shall verbally rescind any previously issued order of confidentiality. The order may be reinstated at the conclusion of the meeting.
- 2. The investigating supervisor shall attend the hearing, unless the employee agrees to waive the supervisor's attendance. Such waiver shall be noted in writing by the reviewing authority as part of the documentation of the disciplinary hearing. The reviewing authority may invite additional persons to attend as desired.
- 3. The investigating supervisor shall present an oral summary of the results of their investigation and an explanation of any relevant regulations of law.
- 4. The employee shall be provided an opportunity to present statements and other evidence on their behalf.

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5. Examination or cross-examination of the investigating supervisor or employee shall be conducted by the reviewing authority only. All questions pertaining to statements or evidence shall be directed to the reviewing authority.
6. The reviewing authority may pose questions from the employee, and/or the investigating supervisor, as may be necessary in order to determine the facts relevant to the matter in question.
7. If the employee requests the identity of other individuals interviewed in connection with the investigation, such information shall be provided, unless one or more of the following conditions exist:
  - a. The individual expressed a reasonable fear of retaliation from the employee, or other person, if their participation in the investigation became known.
  - b. Disclosure is prohibited by a specific law or court order.
  - c. Disclosure would reveal the identity of an individual providing information in confidence to the Department.
  - d. Disclosure would compromise the conduct of an ongoing criminal or administrative investigation.
8. The failure of any employee to provide full, complete, and truthful answers to any lawful question posed by the reviewing authority shall be considered misconduct. Appropriate disciplinary action may be imposed for such acts or omissions.
9. Prior to concluding the disciplinary hearing, the reviewing authority should, at a minimum, ask the following questions of the employee:
  - a. Are there any other witnesses to this incident that should be interviewed?

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- b. Are there any other investigative steps which you feel should be taken to obtain all the relevant facts surrounding this incident?
  - c. Do you have any concerns about the conduct of the investigation?
- 10. Should the reviewing authority conclude that additional investigation is required, the investigating supervisor shall be given appropriate direction. Upon completion of the investigation, the reviewing authority shall comply with the requirements of Section VIII, Paragraph A or B, as described herein.
- 11. The reviewing authority shall document the disciplinary hearing in the Action Taken section of the administrative investigation report. At a minimum, the report shall reflect the persons present at the hearing, any relevant information provided by the employee, and any additional actions taken as a result of the hearing.
- 12. Upon completion of the disciplinary hearing the reviewing authority shall summarize their conclusions in the Action Taken section of the administrative investigation report. This shall include the identification of the specific laws and/or regulations alleged to be violated and the appropriate classification as defined by General Order 301, Internal Investigations, Section VI, Classification of Allegations. The employee shall be notified of the reviewing authority's conclusion(s) by memorandum as required by Section VII of this general order. A copy of the memorandum shall be included in the administrative investigation file.

## IX. APPEALS

Appeals by sworn employees to the Chief of Police for disciplinary actions taken at a level of command below the Office of the Chief of Police.

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### A. Written Reprimand

1. The accused employee shall have the option to appeal a written reprimand as authorized by Section V paragraph B of this order by submitting a Step 2 Grievance Form to the employee's respective bureau commander within 20 work days from the date of receipt of the reprimand.
2. If the accused employee is not satisfied following the response from the respective bureau commander, the employee shall have five work days after receiving the response to submit a Step 3 form appealing the decision to the Chief of Police.
3. The Chief of Police or the designated representative shall hear the appeal and determine final disposition within 20 work days of appeal.
4. If the accused employee is not satisfied following the response from the Chief of Police, the employee shall request on the appropriate form to the County Executive a determination concerning the grievability of the complaint within ten work days of receipt of the Third Step reply. Written reprimands are only eligible to receive an advisory opinion from the Civil Service Commission.

### B. Suspension, Disciplinary Transfer, Demotion, Unsatisfactory Service Separation, or Termination

In cases involving a recommendation of suspension, disciplinary transfer, demotion, unsatisfactory service separation, or dismissal which is recommended at the district or division level, the employee shall have 20 work days after receiving the Advance Notice Memorandum to submit a completed Step 2 Grievance Form to their bureau commander. This will result in a grievance hearing with that bureau commander. Should the bureau commander not be available or where there is no bureau commander, the deputy chief responsible for the bureau shall coordinate the hearing.

If the accused employee is not satisfied following the response from their respective bureau commander, they shall have five work days after receiving the response to declare in writing to the Chief of Police their

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choice of the appeal procedures of this general order or General Order 310.3, Grievance Procedures for Sworn and Non-Sworn Employees/Chapter 17 of the Personnel Regulations of the County of Fairfax. The employee may be assisted by counsel at the employee's expense. Failure to respond within this time period will waive an employee's right to appeal as provided in this general order.

A sworn employee who elects to appeal under this general order must submit a memorandum to the Chief of Police within the five work day period following the employee's receipt of the Step 2 response. The memorandum must clearly state only one of the following options:

1. The recommended disciplinary action is appealed and a hearing panel is requested. Additionally, the memorandum shall include the name of the hearing panel member chosen by the appellant and the name, if any, of the appellant's attorney.
2. The recommended disciplinary action is appealed and no hearing panel is requested. The accused employee requests appeal to the Chief of Police. Additionally, the memorandum shall include the name, if any, of the appellant's attorney. The case shall be heard by the Chief of Police, and disposition shall be determined after reviewing any advisory recommendations submitted by bureau commanders and the Deputy Chiefs of Police.

A sworn employee who elects to appeal under General Order 310.3, Grievance Procedures for Sworn and Non-Sworn Employees/Chapter 17 of the Personnel Regulations of the County of Fairfax must submit to the Chief of Police a completed Step 3 Grievance Form within five work days of their receipt of the Step 2 response. This will result in a grievance hearing with the Chief of Police. More detailed information of these procedures can be found under Chapter 17 of the Personnel Regulations of the County of Fairfax.

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### X. HEARING PANELS

Virginia Code Section 9.1-504 establishes a hearing panel as an advisory body, recommendations from the hearing panel shall be advisory to the Chief of Police, but shall be accorded significant weight. The findings and recommendations of the hearing panel shall be consistent with all applicable laws and ordinances.

#### A. A hearing panel shall be convened:

1. Upon request of an employee after appealing the decision to the appropriate bureau commander as provided in IX.C.
2. By direction of the Chief of Police.

#### B. Hearing panels shall consist of three members, all of whom shall be sworn employees of the Department, except the following are specifically prohibited from serving on a hearing panel:

1. Sworn employees who are related to the accused employee by blood or marriage.
2. Sworn employees who are, or have been, involved in an administrative investigation for possible improper conduct involving the same or a related incident.
3. Sworn employees who, during the last year, have been suspended, demoted, or transferred for punitive reasons.
4. Sworn supervisors responsible for the investigation and/or review of the administrative investigation.

#### C. Hearing panels shall be selected by the following procedure:

1. One member selected by the accused employee.
2. One member appointed by the Chief of Police. Such member shall be of equal rank or rank no greater than two ranks above the accused employee. This member shall serve as chair of the hearing panel.

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3. One member selected by the other two members.

In the event that such two members cannot agree on their selection, the Chief Judge of the 19th Judicial Circuit shall choose the third member.

- D. Hearing panels shall be convened no later than 14 calendar days following the date of request by the accused officer, unless a later date is agreed to by the accused officer and the Chief of Police.
- E. The commander of the Internal Affairs Bureau is responsible for the scheduling of the hearing panel and arranging for the recording of testimony.
- F. Conduct of the hearing panel

The hearing panel shall be conducted in accordance with the Law Enforcement Officers' Procedural Guarantees (Va. Code Section 9.1-500 *et al*) and the Department's Procedural Guidelines for the Conduct of Hearing Panels.

### XI. APPEALS TO THE COUNTY EXECUTIVE

- A. The appeal of a disciplinary decision made by the Chief of Police involving suspensions, disciplinary transfers, demotions, unsatisfactory service separations, or terminations shall be made in writing to the County Executive within ten work days of notification of such disciplinary decision. (Decisions resulting in oral or written reprimands are not appealable to the County Executive.) A copy of the appeal shall also be forwarded to the Chief of Police.
- B. If the decision of the Chief of Police was made following the recommendations of a hearing panel, the County Executive may consider the findings and recommendations of the hearing panel as well as the findings and actions of the Chief of Police.

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- C. If the decision of the Chief of Police was made without referral to a hearing panel for its recommendation, then the County Executive shall direct the appointment of a Special Police Hearing Panel, unless the employee waives the right to such a hearing panel in writing.
- D. The Special Police Hearing Panel shall be selected and the hearing conducted as provided in Section X of this general order. The findings and/or recommendations of the Special Police Hearing Panel are to be given to the appellant or the appellant's attorney and the County Executive within five work days. The findings and recommendations are advisory to and not binding on the County Executive.

## XII. LEGAL REFERENCE

Code of Virginia, Section 2.2-3002; Sections 9.1-500 through 9.1-507

## XIII. ACCREDITATION STANDARDS REFERENCE

VLEPSC

PER.

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This general order becomes effective October 1, 2011 and rescinds all previous rules and regulations pertaining to the subject.

ISSUED BY:

APPROVED BY:

A handwritten signature in black ink, appearing to read "M. M. M.", written over a horizontal line.

Chief of Police

A handwritten signature in black ink, appearing to read "A. H. C. B.", written over a horizontal line.

County Executive